

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

ACTION STEEL SUPPLY, INC.

PLAINTIFF

V.

NO. 4:98CV182-P-A

DIXIE PIPELINE, LLC and
JOHNNY EDWARDS

DEFENDANTS

MEMORANDUM OPINION

This day this cause came on for hearing on plaintiff's motion for allowance of attorney's fees. Defendants have not responded to said motion. The Court, having reviewed plaintiff's motion and the affidavit in support thereof, and being otherwise fully informed in the premises, is prepared to rule. The Court finds as follows, to-wit:

On September 22, 1998, Action Steel sued Dixie Pipeline for failure to pay for commercial grade industrial pipes which had been manufactured and shipped to the defendant. On October 14, 1998, after allowing twenty days for the defendants to respond to the complaint, Action Steel moved for a default judgment, and an entry of default was entered by the clerk of the Court. The next day, defendant Edwards filed his "response." Action Steel then promptly filed its motion to strike the response as untimely. The motion to strike was denied, and litigation ensued.

Action Steel filed its first set of discovery requests on November 10, 1998. Since no response was forthcoming, and since attorneys for Action Steel were unable to locate the defendants by telephone, Action Steel was forced to file a motion to compel discovery responses. The motion to compel was granted on January 7, 1999. Action Steel subsequently subpoenaed Billy Edwards and Johnny Edwards to attend depositions on February 19, 1999. Billy Edwards was deposed; however, Johnny Edwards did not appear. It was at this deposition that Action Steel first realized that Dixie Pipeline claimed an offset because of allegedly defective pipes that were sold to them.

Action Steel then secured affidavits regarding the quality of the goods shipped. In April of 1999, Action Steel moved for summary judgment. Neither Dixie Pipeline nor Johnny Edwards

responded to this motion. The motion was subsequently granted in part by this Court.

Counsel for Action Steel maintains that “[p]rosecution of this matter was rendered more difficult and more expensive by Defendants’ failure to retain counsel, failure to communicate with Plaintiff, and outright refusal to participate meaningfully in this litigation.”

Counsel for Action Steel asks this Court to award attorney’s fees in the amount of \$5,731.53 jointly and severally against Dixie Pipeline, LLC, and Johnny Edwards, individually. For the following reasons, this Court holds that the motion for allowance of attorney’s fees should be granted.

In awarding attorney’s fees, this Court must arrive at a “lodestar” figure by multiplying the reasonable number of hours expended by the prevailing hourly rate in the community for similar work. Nisby v. Commissioners Court of Jefferson County, 798 F.2d 134, 136-137 (5th Cir. 1986). The Court must then consider the twelve factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-719 (5th Cir. 1974), overruled on other grounds, Blanchard v. Bergeron, 489 U.S. 87, 109 S.Ct. 939, 103 L.Ed. 67 (1989), to determine whether the lodestar figure should be adjusted to reflect any factors not otherwise subsumed in the lodestar calculation. Nisby, 798 F.2d 136-137.¹

Neither the time expended nor the hourly rate is disputed by Dixie Pipeline. By not contesting the plaintiff’s fee request, Dixie Pipeline, in effect, admits the validity of the requested amount. See Transamerica Ins. Co. v. Avenell, 66 F.3d 715, 722 (5th Cir. 1995); United States v. Con-Real Support Group, Inc., 950 F.2d 284, 290 (5th Cir. 1992). The Court has reviewed the plaintiff’s counsel’s affidavit and invoices and finds the reported hours (roughly, sixty hours) to be reasonably expended. The Court further finds that the hourly rates charged (\$95.00 an hour) is

¹ Those twelve factors include: (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) the award in similar cases. Johnson, 488 F.2d at 717-719.

comparable with the prevailing rates in the community. The Court has considered the twelve factors set forth in Johnson, but finds that an adjustment of the lodestar figure is not warranted. Therefore, the Court finds that the counsel for Action Steel is entitled to receive \$5,731.53 in attorney's fees.

An order will issue accordingly.

THIS, the _____ day of December, 1999.

W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE